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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARY EILEEN FARRAR,

Defendant and Appellant.

B163073

(Los Angeles County
Super. Ct. No. SA018516)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Katherine Mader, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Pamela C. Hamanaka, Senior Assistant Attorney General, William T. Harter,
Supervising Deputy Attorney General, and Kenneth N. Sokoler, Deputy Attorney
General, for Plaintiff and Respondent.

Mary Farrar appeals from the judgment entered following a jury trial in which she
was convicted of two counts of kidnapping (counts 1 and 2) and two counts of residential

robbery (counts 3 and 4), each with the use of a firearm. She contends that her motion to dismiss for lack of a speedy trial was erroneously denied. We affirm.¹

FACTS

In the early 1990's, defendant worked in the Pacific Palisades home of Levi Carey, taking care of Carey's wife, who was terminally ill. After Carey's wife died, defendant and Carey had a romantic relationship that lasted several months. At a point not disclosed by the record, Carey's fiancée, Patricia Howlett, moved into the Carey residence.

On the evening of May 18, 1994, Carey was at home with Howlett when defendant came to the door, saying that she needed money for her baby. Carey let her in and observed that she was holding a handgun. Other persons with handguns also entered the house. The intruders took jewelry and other property from Carey and Howlett. Carey and Howlett were bound and taken in a car to a Crenshaw Boulevard residence. There, they were interrogated about money and Carey eventually suggested that they go to a bank.

The next morning, defendant's accomplices took Carey to a bank, where he told the manager that he needed \$10,000 in small bills. Carey also told the manager that people were holding his fiancée hostage and asked that the police not be called. The manager nonetheless called security personnel and stalled in giving any money to Carey. The police soon arrived at the bank and rescued Carey. Howlett was released by the kidnappers later that day.

¹ The Attorney General contends the abstract of judgment should be corrected because it fails to show defendant's sentence to life in prison on count 2, reflecting only the four years imposed on that count for the use of a firearm. (A concurrent sentence was imposed on count 1; imposition of sentence on counts 3 and 4 was stayed pursuant to Penal Code section 654.) But the abstract of judgment for defendant's indeterminate commitment reflects both the life sentence and the four-year enhancement. Accordingly, we find no basis for correction of the abstract.

In defense, defendant testified that she was still involved in a relationship with Carey at the time of the incident. On the night of May 18, she had been driven to Carey's house by Linford Burns. Sonia Key and "Greg" were also in the car. While defendant was talking to Carey at his front door, Burns and Greg rushed into the house with guns. Although she knew nothing of the plan to rob Carey, she cooperated with Burns, Greg, and Key (who also participated in the robbery and kidnapping) because she felt threatened.

DISCUSSION

A felony complaint was filed against defendant on July 8, 1994, and a warrant was issued for her arrest. Defendant was arrested on April 15, 2001. She was charged with crimes arising from the incident by information filed on August 13, 2001.

Prior to trial, defendant filed a motion to dismiss the matter for lack of a speedy trial. She contended that she was well-known to Carey, who was aware of the address where she was living at the time of the incident and from which she did not move until September 1994. She thereafter changed her address several times, but at no time hid her identity or whereabouts. Defendant claimed prejudice from the delay in that she was unable to gain cooperation from Burns and Key, both of whom, claimed defendant, could testify that defendant was unaware of the plot to rob and kidnap Carey and that she appeared to participate with the others only because she was afraid of Burns. Burns was serving a life sentence at Folsom prison and had appeals and writs pending. He had told defendant that "he would not speak about the incident due to his own case pending appeal/writs." Similarly, Key was "unwilling to cooperate due to her prison status." Thus, concluded defendant, the "damage to [her] defense is manifest, and her inability to obtain the cooperation of two percipient witnesses due to the lapse of time occasioned by the lack of prosecution is clearly substantial prejudice."

The trial court denied defendant's motion. It so doing, it reasoned that defendant had failed to show loss of witnesses or evidence, or that memories of witnesses had faded due to the delay. Specifically, with respect to Burns and Key, there was nothing to indicate that they would have refrained from exercising their Fifth Amendment rights and

testified at defendant's trial or that any testimony they might have given would have been helpful to defendant.

We reject defendant's contention that this ruling was in error.

The right to a speedy trial exists under both the United States and the California Constitutions. With respect to the former, the right does not attach until the filing of the information. (*People v. Martinez* (2000) 22 Cal.4th 750, 765.) Defendant does not contend that there was undue delay from the time of that filing (August 2001) until trial. Rather, she argues that *Martinez* was wrongly decided. We are bound to follow *Martinez*, and we reject defendant's federal constitutional argument on that basis. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Under the California Constitution, the filing of a felony complaint (rather than the information) is sufficient to trigger speedy trial protection. (*People v. Martinez, supra*, 22 Cal.4th at p. 765.) And "[n]o affirmative showing of prejudice is necessary to obtain a dismissal for violation of the state constitutional speedy trial right as construed and implemented by statute. [Citation.]" (*Id.* at p. 766, italics omitted.) But where, as here, "the alleged delay occurs prior to the filing of an indictment or information, there is no presumption [of prejudice] and a three-step analysis is employed to determine whether the defendant's rights have been violated. First, the defendant must show he has been prejudiced by the delay. Second, the burden then shifts to the prosecution to justify the delay. Third, the court balances the harm against the justification. [Citations.]" (*People v. Dunn-Gonzalez* (1996) 47 Cal.App.4th 899, 911.) "The question of whether a defendant has established prejudice occasioned by the delay is a factual matter to be resolved by the trial court, and its decision on that point will not be overturned by an appellate court if supported by substantial evidence. [Citation.]" (*People v. Martinez* (1995) 37 Cal.App.4th 1589, 1593.)

Defendant urges it is unlikely that she would have knowingly participated in the criminal plot against Carey given his ability to identify her and suggests that "[t]his court should not speculate that these witnesses [(Burns and Key)] would not have been willing to provide exculpatory testimony if [she] had been brought to trial in a timely fashion."

We do not assume as a general proposition that crime partners would be willing to exonerate one of their cohorts. And more important, it was defendant's burden to show prejudice from the delay. She has not established that these witnesses were any less available or any less willing to testify because they were now themselves felons, or that they would have been granted immunity for their testimony, or that the passage of time had rendered their potential testimony any less helpful to her cause. Based on defendant's failure to present evidence that would demonstrate prejudice as a matter of fact, her motion to dismiss was properly denied. (*People v. Martinez, supra*, 37 Cal.App.4th at p. 1593.)

DISPOSITION

The judgment is affirmed.

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MALLANO, J.

We concur:

SPENCER, P. J.

ORTEGA, J.